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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,134	02/27/2004	Roger P. Jackson	10,398	6767
7590	11/29/2005		EXAMINER	
John C. McMahon PO Box 30069 Kansas City, MO 64112			KIM, JOHN	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TWT

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,134	JACKSON, ROGER P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John Kim	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/27/20, 6/27/2005.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: On page 11 paragraph 37, the reference number 14 is used for both "elongate body (of end guide tool)" and "patient's skin." Appropriate correction is required. Applicant is advised to read the entire specification and make the proper corrections as necessary.

### ***Claim Objections***

Claims 7-9 are objected to because of the following informalities: All three claims are dependent claims that depend from themselves. For example, claim 7 states "The combination of Claim 7 including..." Thus, claims 7-9 are withdrawn from consideration.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haider (US. Pat. 6,740,098, cited in IDS) in view of Roussouly et al. (US Pat. 5,810,816).

Haider discloses a tool set or kit used for spinal surgery. He also teaches a "method of correcting this condition (scoliosis) is to surgically install a series of rods and

supporting devices to reconfigure the spine..." (col 1 lines 25-26) Thus, a minimum of two Haider's invention is required for the surgery. Haider teaches a guide tool (26) that includes a channel that is adapted to receive a rod and guides the rod to the bone anchor (22). (see figures 1-6) He also includes the first helically wound guide tool and advancement structure (A) that will receive the mating structure (40) of a bone anchor closure top (42). Haider shows that the first guide (A) is also connected to the second guide and advancement structure (B) on the bone anchor, thus having a continuous helical pathway. (see below)

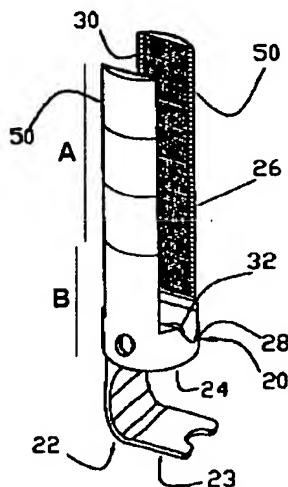


Fig. 1

Haider also discloses a lower attachment structure (38) that is attachable to the bone anchor (22). (see figure 4 and 6). Again, Haider shows there is a longitudinal pass and slot (figure 1) which can guide the rod to the bone anchor (22). The helically wound first (A) and second (B) guide and advancement structure, the continuous helical pathway, and the mating structure (40) of the bone anchor closure top (42), have been discussed above.

Haider also further discloses a tool set or kit that includes "a series of rods and supporting devices (anchors) to reconfigure the spine." (col 1 lines 26-7) In a series of anchors, the anchors closest to the patient's head and buttocks are considered as the end bone screws (anchors). Referring to Haider, these anchors work with the guide tools (26, figure 1), which are considered as end guide tools. The anchors in the middle are considered as the intermediate anchors, which also work with guide tools (26) considered as intermediate guide tools. Both the end and intermediate guide tools (26) have their own attachment structure (38, see figure 4). Both guide tools have either a longitudinal guide channel or longitudinal pass through a slot (see figures 1-3) made by the arms (50). Haider teaches that a rod (33) will be received by the channel or pass. As discussed above, Haider teaches a first (A) and second (B) guide and advancement structure with a helically wound or helical pathway. The first (A) and second (B) guide and advancement structure are positioned and aligned to form a continuous helically wound path. Haider also teaches a closure top (42) that has a mating guide and advancement structure (40).

Haider discloses the claimed invention except for the bone anchor being a bone screw. Roussouly et al. (US Pat. 5,810,816) teaches that a bone screw and bone hook can be used interchangeably. "The present invention concerns anchors such as pedicle screws and hooks used for instrumentation of the spine, which are placed on the vertebrae to constitute anchor members linked together by one or more attachment rods." (col 1 lines 5-9) It would have been obvious to one skilled in the art at the time of the invention was made to construct the tool set or kit of Haider with the bone anchor

being a bone screw rather than a bone hook in view of Roussouly et al, since these parts are interchangeable.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (571) 272-2817. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JK 



EDUARDO C. ROBERT  
EXAMINER 3733